

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**UNITED STATES OF AMERICA**

**v.**

**DARNELL UPSHAW**

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**CR No. 1:05-CR-10222-DPW**

**MOTION OF DEFENDANT DARNELL UPSHAW  
TO AMEND CONDITIONS OF RELEASE**

Defendant Darnell Upshaw hereby moves to amend his conditions of release. The amendment requested is for the limited purpose of permitting Mr. Upshaw to travel to his mother's home in Maryland to visit her and attend a family reunion. The duration of Mr. Upshaw's visit to Maryland (including travel time), would be 9 days. In further support of this motion, Mr. Upshaw states:

1. Mr. Upshaw's September 2, 2005 conditions of release and May 12, 2006 modified conditions of release, copies of which are attached hereto as Exhibit A and Exhibit B, respectively (hereafter "conditions of release"), prohibit him from traveling outside of Suffolk County, Massachusetts. By way of this Motion, Mr. Upshaw seeks permission to travel to his mother's home in Maryland to visit her and attend a family reunion from August 11, 2006 to August 19, 2006. Mr. Upshaw's mother is Debra Bonner Ford and she lives at 2601 Merganser Court, Waldorf, Maryland 20601, with her husband and daughter.

2. The family reunion that Mr. Upshaw would like to attend is a reunion of his mother's family, some of whom he has not seen in over ten years. Mr. Upshaw expects over fifty family members to attend this reunion, many of whom will be traveling to Maryland from other states including New York, Florida and Alabama.

3. If allowed to travel to Maryland, Mr. Upshaw would accompany his aunt, Loretta Miller and her two children aged 9 and 16 years old, on the drive from Boston, Massachusetts, to Waldorf, Maryland, on August 11, 2006, and the drive from Waldorf, Maryland, to Boston, Massachusetts, on August 19, 2006.

4. Mr. Upshaw's conditions of release also require him to abide by a curfew where he must be at his residence in Boston from 9:00 p.m. to 6:00 a.m. daily and be supervised by Electronic Monitoring during this time. By way of this Motion, Mr. Upshaw seeks to modify the terms of his curfew so that it be suspended for the limited period of August 11, 2006 through to August 19, 2006, or in the alternative, that his curfew be modified so that he is required to be at his mother's house in Waldorf, Maryland between the hours of 9:00 p.m. to 6:00 a.m. every day between August 11, 2006 and August 18, 2006, and that the Electronic Monitoring be suspended while he is in Maryland.

WHEREFORE, Mr. Upshaw requests that this Motion be allowed, and that his conditions of release be amended for the sole purpose of permitting him to travel to Maryland from August 11, 2006 to August 19, 2006 to visit his mother and attend a family reunion with a limited suspension of his curfew and Electronic Monitoring. In all other respects, Mr. Upshaw's conditions of release would remain unchanged.

Respectfully Submitted,

DARNELL UPSHAW

By his attorneys,

/s/ Anita Bapooji Ryan

David J. Apfel (BBO # 551139)

Anita Bapooji Ryan (BBO # 644657)

GOODWIN PROCTER LLP

Exchange Place

Boston, MA 02109-2881

617-570-1000

Dated: August 4, 2006

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

Pursuant to Local Rule 7.1(A)(2) of the United States District Court for the District of Massachusetts, counsel for Defendant Darnell Upshaw hereby certifies that she has conferred with Christopher Bator, counsel for the United States Attorney's Office, who has indicated that he defers to the position of Pre-Trial Services on this motion, and that she has conferred with Pre-Trial Services, who takes no position on this motion.

/s/ Anita Bapooji Ryan  
Anita Bapooji Ryan

**CERTIFICATE OF SERVICE**

I, Anita Bapooji Ryan, attorney for the Defendant Darnell Upshaw, do hereby certify that I caused a copy of this motion to be served upon Christopher Bator, Assistant U.S. Attorney, via ECF on August 4, 2006.

/s/ Anita Bapooji Ryan  
Anita Bapooji Ryan

# **EXHIBIT A**

## UNITED STATES DISTRICT COURT

District of MASSACHUSETTS

United States of America

V.

ORDER SETTING CONDITIONS  
OF RELEASEDarnell Upshaw

Defendant

Case Number: 05 cr 10222 DPW

IT IS ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing before any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) \_\_\_\_\_

Place

on \_\_\_\_\_

Date and Time

## Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- ( ☒ ) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ☒ ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of twenty five thousand dollars dollars (\$ 25,000 ) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

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## Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community:

IT IS FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:

(Name of person or

(Address)

(City and state)

(Tel. No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_

Custodian or Proxy

Date

( X ) (7) The defendant shall:

( ) (a) report to the Pretrial Service Dept as directed  
 telephone 617-748-9213, not later \_\_\_\_\_

( ) (b) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property: \_\_\_\_\_

( ) (c) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the \_\_\_\_\_

( ) (d) execute a bail bond with solvent sureties in the \_\_\_\_\_

( ) (e) maintain or actively seek employment.

( ) (f) maintain or commence an education program.

( ) (g) surrender any \_\_\_\_\_

( ) (h) obtain no passport.

( ) (i) abide by the following restrictions on personal association, place of abode, or travel: \_\_\_\_\_

( ) (j) avoid all contact, directly or indirectly, with any persons who are or who may become a victim or potential witness in the subject prosecution, including but not any known felon

( ) (k) undergo medical or psychiatric treatment and/or remain in an institution \_\_\_\_\_

( ) (l) return to custody each (week) day \_\_\_\_\_ o'clock after being released each (week) day \_\_\_\_\_ o'clock for schooling, or the following limited \_\_\_\_\_

( ) (m) maintain residence at a halfway house or community corrections center, as deemed necessary by the pretrial services office or

( X ) (n) refrain from possessing a firearm, destructive device, or other dangerous weapons. including ammunition

( ) (o) refrain ( ) any ( ) excessive use of alcohol.

( X ) (p) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

( X ) (q) submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing.

( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the pretrial services office or supervising officer.

( ) (s) refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or electronic monitoring which is (are) required as a condition(s) of release.

( ) (t) participate in one of the following home confinement program components and abide by all the requirements of ( ) will

( ) will not include electronic monitoring or other location verification system. You shall pay all or part of the cost of the program to pay as determined by the pretrial services office or supervising officer.

( ) (i) Curfew. You are restricted to your residence ( ) from 9pm to 6am, or ( ) as directed by the services office or supervising officer; or

( ) (ii) Home Detention. You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the pretrial services office or supervising officer; or

( ) (iii) Home Incarceration. You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the pretrial services office or supervising officer.

( X ) (u) report as soon as possible, to the pretrial services office or supervising officer any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.

( ) (v) Travel list to Suffolk County with the exception of Braintree  
Def't is not to have or go into Braintree

( ) (w) Drug testing Regularly

( ) (x) Def't is to live with Girlfriend, Angelique Cribbs

\* a lock box must be installed \*

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Darnell Upshaw  
Signature of Defendant

Fessenden st Mattapan  
Address

Boston Ma  
City and State Telephone

**Directions to United States Marshal**

- ( ) The defendant is ORDERED released after processing.
- ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 9/2/05

Leo T. Sorokin  
Signature of Judicial Officer  
July 6, 2005  
LEO T. SOROKIN, USMJ  
Name and Title of Judicial Officer

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# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

CRIMINAL NO 05-10222-DPW

DARNELL UPSHAW

ORDER MODIFYING CONDITIONS OF RELEASE

WOODLOCK, D.J.

After a Rule 11 hearing on May 11, 2006, regarding Defendant Upshaw's conditions of pretrial release, it is hereby ORDERED that the Defendant's conditions of release are modified as follows:

1. Defendant's curfew shall be supervised through Electronic Monitoring, effective May 12, 2006. By May 12, 2006, the Defendant shall establish a working land-line telephone which is compatible in all respects with the Electronic Monitoring system, to ensure he may receive automated curfew calls;
2. The Defendant shall be at his place of residence at all times between his curfew hours of 9:00 p.m. and 6:00 a.m; and
3. All other conditions of release shall remain in full force and effect.

SO ORDERED.

/s/ Douglas P. Woodlock  
DOUGLAS P. WOODLOCK  
UNITED STATES DISTRICT JUDGE

DATE: May 12, 2006